

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

**ANITA DANIELLE BILLO,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 2:21-cv-00598**

**TARGET CORPORATION,**

**Defendant.**

**NOTICE OF REMOVAL**

Comes now the Defendant, Target Corporation (“Target”), by counsel, Moore & Biser, PLLC, Rita Massie Biser and Lynnette Simon Marshall, pursuant to 28 U.S.C. §1332, 28 U.S.C. § 1441 and 28 U.S.C. § 1446, and gives notice of the removal of the above-styled action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia at Charleston. As grounds for removal, Target states as follows:

1. This civil action was commenced on or about October 6, 2021, in the Circuit Court of Kanawha County, West Virginia, being Civil Action No. 21-C-897.

2. Service was accepted on behalf of Target by the West Virginia Secretary of State’s Office on October 14, 2021. The West Virginia Secretary of State sent the Complaint and Summons to Target’s agent for notice of process on October 15, 2021, and it was received by Target’s agent on October 18, 2021. (*See* Exhibit 1).

3. The Complaint arises from an alleged incident at the Target store located in South Charleston, Kanawha County, West Virginia on or about October 11, 2019. (*See* Exhibit 2, Complaint at ¶¶s 5-6). Specifically, Plaintiff alleges that she was shopping in the store when she slipped in water and struck her knee on the floor thereby suffering “serious and permanent personal

injuries, including a torn meniscus as a result of the fall, eventually undergoing knee surgery.” (Complaint at ¶ 11).

4. Plaintiff alleges that the Defendant breached its duty of care by negligently failing to maintain its premises in a reasonably safe condition and failing to warn Plaintiff of the unsafe and dangerous condition created by water on the floor. (Complaint at ¶ 9).

5. Plaintiff, Anita Danielle Billo, alleges that she is a resident of Kanawha County, West Virginia. (Complaint at ¶ 1).

6. Defendant, Target Corporation, is a foreign corporation headquartered in Minnesota that is authorized to conduct business in the State of West Virginia. (*See* Exhibit 3, WV Secretary of State business organizations database; and Complaint at ¶ 2.)

7. Plaintiff alleges that as a direct and proximate result of the Defendant’s conduct she has suffered “serious and permanent personal injuries, including a torn meniscus” and has incurred and will continue to incur in the future: “medical and other out of pocket expenses, lost wages, physical pain and suffering, mental anguish, emotional distress, and loss of ability to enjoy life” (Complaint at ¶ 11).

8. Evidence determinative as to the issue of the amount in controversy includes “the type and extent of the plaintiff’s injuries and the possible damage recoverable therefrom[.]” Heller v. TriEnergy, Inc., 877 F.Supp. 2d 414, 426 (N.D.W.Va. 2012). It has previously been held that the “amount in controversy is determined by ‘considering the judgment that would be entered if the plaintiff prevailed on the merits of his case as it stands at the time of removal.’ ” Id., *citing* Landmark Corp. v. Apogee Coal Co., 945 F. Supp. 932, 935 (S.D.W.Va. 1996). The question is not what damages the plaintiff will recover, but what amount is “in controversy” between the

parties. Lanier v. Norfolk S. Corp., 256 F. App'x 629, 631-632 (4<sup>th</sup> Cir. 2007) (internal citations omitted).

9. Plaintiff alleges that as of September 1, 2021, she had already incurred Sixteen Thousand Seven Hundred Ninety Three Dollars and Seventy-Two Cents (\$16,793.72) in past medical expenses; Three Thousand Six Hundred Dollars (\$3,600.00) in lost wages; Seven Hundred Seventy Dollars and Twenty Cents (\$770.20) in miscellaneous out-of-pocket expenses and anticipated incurring at least another Five Thousand Dollars (\$5,000.00) in future medical expenses for pain management treatment for total economic damages of Twenty-Six Thousand One Hundred Sixty-Three Dollars and Ninety-Two Cents (\$26,163.92) as of approximately ten (10) weeks ago. (*See* Exhibit 4, excerpts September 1, 2021 Demand Letter). Plaintiff further alleges that she has suffered greatly both emotionally and physically and that her back injuries are permanent. (*Id.*) Plaintiff has demanded One Hundred Thousand Dollars (\$100,000.00) in settlement of her claim against Target. (*Id.*)

10. Target states that although it will dispute on the merits that the Plaintiff is entitled to any recovery, the Complaint and this Notice of Removal demonstrate that for the above-mentioned reasons, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00) exclusive of costs and interest, and is between citizens of different states.

11. This Court has original jurisdiction over this Civil Action under the provisions of 28 U.S.C. § 1332, and said Civil Action is one that may be removed to this Court by the Defendant pursuant to the provisions of 28 U.S.C. §§ 1141 and 1446.

12. Copies of all process, pleadings and orders served upon Target by Plaintiff in this action, which are comprised of the Summons and Complaint, have been attached hereto as Exhibit

1 and 2, respectively. A copy of the Kanawha County Circuit Court Docket Sheet is also attached hereto and identified herein as Exhibit 5.

13. A copy of this Notice of Removal is being filed in the Circuit Court of Kanawha County, West Virginia. (*See* Exhibit 6).

14. A copy of this Notice of Removal is also being served upon counsel for the Plaintiff as reflected in the accompanying Certificate of Service.

Dated this 12<sup>th</sup> day of November, 2021.

**TARGET CORPORATION,**  
**By counsel,**

/s/ Rita Massie Biser  
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**Defendant.**

**CERTIFICATE OF SERVICE**

The undersigned counsel for Defendant, Target Corporation, hereby certify that on this 12<sup>th</sup> day of November, 2021, the foregoing **NOTICE OF REMOVAL** has been electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing as follows:

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